

760 CMR 25.00: SECURING APPROVAL OF PROJECTS UNDER M.G.L. c. 121A IN CITIES AND TOWNS OUTSIDE OF BOSTON

Section

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25.01: Authority

760 CMR 25.00 et seq. are promulgated by the Department of Housing and Community Development pursuant to authority granted to it, as the state housing board, by M.G.L. c. 121A. The Department of Housing and Community Development (the Department) is the successor to the Department of Community Affairs which is designated as the Housing Board in M.G.L. c. 121A. 760 CMR 25.00 shall be effective upon promulgation.

25.02: Application Requirements

Every application to the Department for approval of a project as defined in M.G.L. c. 121A, §1 shall be submitted in triplicate. It shall contain the following:

(1) Description of Applicant(s). The Application shall state the name, residential address, and occupation of each individual applicant and the structure of the M.G.L. c. 121A entity (a joint venture, a partnership, a limited partnership, a trust or a corporation) including the names and addresses of management and those which will have any beneficial interest in the M.G.L. c. 121A entity. Associations shall include the agreement to associate, if required; and corporations shall include articles of organization. Except in the case of an insurance company, savings bank, or cooperative bank, each applicant shall

submit bank and financial references. The application shall designate an individual with his or her title and address as an authorized person with whom the Department may communicate.

(2) Location and Owners of Project Area. The applicant shall specify the location of the project area. The application shall include a metes and bounds description of the project area and the names of the present owner or owners.

(3) Description of the Project. The application shall describe the proposed project, including the buildings, structures and facilities to be constructed or rehabilitated and the use or uses to which they will be put. In connection with the description of the project, applicants shall submit one copy of the following:

(a) A site plan prepared by an engineer or surveyor showing the project area and the approximate location of structures and facilities to be constructed as a part of the project.

(b) Drawings showing the buildings and other improvements to be constructed in a form adequate to show the nature and extent of the project, including typical elevations and floor plans.

(c) Construction specifications showing generally the character and quality of the construction to be employed.

(d) Such further material, if any, as may be necessary to describe the pertinent characteristics of the project.

(4) Relationship of Project to City or Town Master Plan. The application shall set out the relationship of the project with the city or town's master plan (if any) and explain why any conflicts with the master plan are warranted.

(5) Explanation Why the Project Area Is Blighted, Decadent, or Sub-Standard. The application shall state in detail the reasons why the project area is a blighted open area, a decadent area, or a substandard area as defined in M.G.L. c. 121A, § 1 and specify whether the project area is part of an urban renewal project or an urban revitalization and development project. If located in an urban renewal area for which a finding of blight, decadence or substandard conditions has previously been made, reference shall be made to such finding. In detailing the reasons why the project area is a blighted open, substandard or decadent area, recitation of extensive technical matter is not required, but more than a conclusory restatement of the statutory definition is necessary.

(6) Amenities Which Warrant Additional Tax Exemption.

(a) Application. If extension of the period of tax exemption is sought as part of the original application or subsequently, the application shall describe the amenities which

the project contains and upon which applicant relies for requesting extension of the period of tax exemption.

(b) Subsidized Housing. If applicant seeks an additional period of tax exemption on the basis that the project or a portion thereof is state or federally subsidized housing, the applicant shall specify the subsidy program to be utilized, the number of subsidized units, the duration of the period of any subsidy, and copies of all commitments or contracts from a subsidizing agency, or, if no commitment or contract has been made, copies of any applications made for subsidy.

(c) Housing for Low and Moderate Income Persons. If applicant seeks an additional period of tax exemption on the basis that the project or portion thereof will be housing for persons of low and moderate income, the applicant shall provide a description of any financing or insurance program and any financing or insurance commitments issued at the time of the application, or, if no such financing or insurance commitment exists at such time, any application submitted to obtain such financing or insurance.

(d) Description of Other Amenities. If the applicant claims an additional period of tax exemption on the basis of other amenities, the applicant shall so state and shall provide detailed information sufficient for the Department, the local chief executive and the planning board to evaluate each proposed amenity, according to the standards set out in 760 CMR 25.05. If the applicant claims an exemption from the excise imposed by M.G.L. c. 63 §32, the applicant shall also provide with such supporting documentation as the Department may require.

(7) Development Schedule. The application shall include the schedule for the phases of development of the project after the approval by the Department. Such schedule shall provide for foreseeable contingencies which could delay development.

(8) Cost of Project. The application shall set out the estimated cost of the project broken down by category. A detailed statement of the source and use of funds, income and expense projections, and an operating pro forma shall be included.

(9) Method of Financing. The application shall, except in the case of an application by an insurance company, savings bank, or cooperative bank, specify:

(a) The amount proposed to be raised by mortgage or debt financing and the cost of such financing;

(b) All amounts to be contributed by equity capital and the source of such capital;

(c) All other amounts to be raised, the manner, and the source;

- (d) Any stock, securities or other financial interest to be issued, created or transferred in payment for services, together with a description of the services and their value;
 - (e) A list of all persons and entities who have or will have any financial interest in the project, and the nature and amount of that interest.
 - (f) The method by which any stock in the M.G.L. c. 121A entity shall be offered to owners of real estate in the project area pursuant to M.G.L. c. 121A, § 7.
- (10) Estimated Fiscal Impact on The City or Town. The application shall estimate in reasonable detail the fiscal impact of the proposed project on the city or town, including such information as the expected cost of services for the project, increased employment resulting from the project, gains or losses in tax receipts, and any additional payments, to be made to the city or town, under any agreement with the M.G.L. c. 121A entity.
- (11) Copy of the Proposed Contract with the Municipality. The application shall include the proposed form of contract required by M.G.L. c. 121A, § 6A between the M.G.L. c. 121A entity and the municipality. A copy of the final executed contract shall be provided to the Department by the M.G.L. c. 121A entity within five days following its execution by the municipality and the M.G.L. c. 121A entity.
- (12) Relocation Plan. The application shall include a relocation plan meeting any applicable requirements of M.G.L. c. 79A and regulations of the Department.
- (13) Environmental Assessment. The application shall include an Environmental assessment form, and, if required, an environmental impact report meeting the requirements of M.G.L. c. 30, §§ 61 and 62.
- (14) Agreements for Public Improvements. The application shall state whether or not the proposed project includes or anticipates an agreement with the city or town with respect to the matters covered in M.G.L. c. 121A, §14, and, if so, shall specify the agreement as to such matters.
- (15) Local Regulatory Compliance. The application shall state whether or not the proposed project would be in compliance with all applicable zoning, health and building bylaws or ordinances and any other applicable laws, bylaws, ordinances, rules and regulations. Any non-compliance shall be specified, and the applicant shall explain how the non-compliance will be cured.
- (16) Condominiums. If an Application includes condominiums, additional documentation specified in M.G.L. c. 121A, §18D shall be included.
- (17) Regulatory Agreement. The application shall include a signed but undated draft of the regulatory agreement.

(18) Statement of Non-Disposal of M.G.L. c. 121A Interests. Except in the case of an application in which an insurance company, savings bank, or cooperative bank is an applicant, a legally binding instrument forbidding any change in the M.G.L. c. 121A entity or in its ownership prior to completion of the project without the prior approval of the Department.

(19) Supplementation of Application. Every application submitted to the Department shall be supplemented from time to time prior to its approval in order to keep the information contained therein current and accurate.

25.03: Application for Changes in Approved Project

Applications for approval of changes to an approved M.G.L. c. 121A shall be signed by a duly authorized officer of the M.G.L. c. 121A entity and specify in detail the changes for which approval is sought. The application for approval of a change shall reference all pertinent portions of the approved original application with any approved amendments. The city or town and the Department shall approve without a hearing a change to a project if and to the extent such change is not a material change and does not relate to matters which were required to be, or might properly have been, the subject of deliberation by the Department, by the local planning board or by the mayor or selectmen. An application for a material change shall be processed in the same manner as an original application. The Department shall determine whether a change is material.

25.04: Procedure for Determination of Application

Upon receipt of an application considered complete by the Department, the Department shall transmit a copy of the application to the mayor of a city or selectmen of a town, except in the case of the City of Springfield where the application shall be transmitted to the planning board. The procedure in the city or town following transmittal of an application is set out in M.G.L. c. 121A, § 6. The notice requirements for the public hearing by the planning board are set out in M.G.L. c. 121B, § 6B. In addition to the matters otherwise required to be covered in its written report following the public hearing on the application, the planning board shall also make a written report on any application for an extended period of tax exemption on account of amenities to be provided. The procedure for the Department's determination whether to approve or disapprove an application is set out in M.G.L. c. 121A, § 6.

25.05: Extensions of the Period of Tax Exemption Based on Inclusion of Amenities

(1) Factors to be Considered. An applicant or an existing M.G.L. c. 121A entity may request an extension of the period for tax exemption based on the inclusion of amenities shall be reviewed by the planning board, the mayor or selectmen and the Department.

Extension of the exemption period shall be for a minimum of one year and a maximum of ten years. Extensions shall be considered for the amenities set out in M.G.L. c. 121A, § 10, Paragraph 11. The following factors shall be considered in evaluating any amenity for which an extension is sought. The factors upon which an extension of tax exemption is granted shall be specified in writing and included with the decision. An extension shall not be granted for the same amenity more than once.

- (a) The added expense borne by the applicant because of the provision of such amenity, including expenses to be incurred during the development and construction phases of the project, and continuing expenses to be incurred during the operation of the project.
 - (b) Other financial considerations, such as the terms of long term financing to be provided to the project or loss of project revenue;
 - (c) The potential for job creation and opportunities for increased economic development.
 - (d) Support for the amenities from persons within the community whom the project is intended to serve;
 - (e) Aspects of the amenities which go beyond similar amenities required to be provided under the applicable laws, ordinances, and regulations. If provision of amenities, which are specifically required to be provided by statute, ordinance or law, places such an unusual and unique burden on the project, different from other M.G.L. c. 121A projects, the mayor or selectmen and the Department may determine that an extension is warranted, on account of such amenities.
 - (f) The superior quality and quantity of such amenities. The quality and quantity of amenities in other M.G.L. c. 121A projects and in other similar projects may be used as a guideline for evaluating the proposed amenities.
 - (g) Other factors, deemed relevant under the circumstances.
- (2) Involvement of the Planning Board. The planning board shall have the same authority with respect to a request for extension of the period of tax exemption as with the rest of the application. The planning board shall have the authority to recommend changes to the amenities proposed to be established by the M.G.L. c. 121A entity, provided that, if the Planning Board has decided to approve the project, the failure of the M.G.L. c. 121A entity to make any such changes to the amenities, as suggested by the Planning Board, shall not result in the disapproval of the application for approval of the formation of a M.G.L. c. 121A entity for the project, but only in the disapproval of an extension of the period of tax exemption.

25.06: Procedure for Obtaining Approval of the Use of Eminent Domain by a M.G.L. c. 121A Entity

(1) Policy in Regard to Acquisition of Property. In carrying out its real estate acquisition program, the M.G.L. c. 121A entity shall use reasonable efforts to acquire property by negotiated sale. It shall only take property by eminent domain when all other reasonable methods of obtaining the property have failed.

(2) Procedure for Securing Approval of a Taking. Prior to DHCD's approval of the use of eminent domain, a M.G.L. c. 121A entity must provide written verification that the following steps have been followed:

(a) The Owner of the interest to be acquired has received from the M.G.L. c. 121A entity a final written offer to acquire the interest, and the owner has not accepted the offer within 30 days after receipt.

(b) Upon the owner's written rejection of the final written offer or failure to accept the final written offer within the time specified for acceptance, the M.G.L. c. 121A entity shall notify in writing the Department, the mayor or selectmen of the municipality within which the proposed project is located, and the owner of such real property, of the M.G.L. c. 121A entity's determination that acquisition by use of eminent domain under M.G.L. c. 79 is necessary.

(c) Following such notice and upon written request of the M.G.L. c. 121A entity, the Department may give the M.G.L. c. 121A entity written authorization to proceed to take such property by eminent domain in accordance with M.G.L. c. 79, provided the M.G.L. c. 121A entity has guaranteed, by placing in escrow or otherwise securing to the satisfaction of the Department, that at least the amount of the final written offer shall be available for payment of damages which may be awarded under M.G.L. c. 79, M.G.L. c. 121A, § 11, or other applicable law.

(3) Content of Final Written Offer. The final written offer shall contain:

(a) A final offering price, together with a statement that such price and is based on two written independent appraisals of the property each performed by an appraiser who is licensed by the Commonwealth;

(b) All terms and conditions of the offer;

(c) An explanation of the steps the M.G.L. c. 121A entity will take to acquire the property if the owner rejects or fails to accept the final written offer;

(d) An invitation to discuss the acquisition of the property, including the appraisals, with a qualified representative of the M.G.L. c. 121A entity. Such

invitation shall specify a reasonable time period for the owner to accept or reject the invitation.

(e) A clear, explicit statement on the first page of the final written offer of the time period, not to be less than 30 days, within which the owner must decide to accept or reject the final written offer;

(f) An explanation of the manner by which an acceptance or rejection can be communicated to the M.G.L. c. 121A entity;

(g) A statement that, to the extent practicable, the dates for closing and delivery of possession shall be determined by the owner in the agreement of sale.

(h) An explanation of the mechanism by which full payment is guaranteed.

25.07: Air Rights Projects

An air rights project consists of the acquisition of an air rights site designated as a M.G.L. c. 121A project area. An air rights project shall be planned to insure the future stability of the airspace use and its continuing compatibility with surrounding surface and airspace uses. An area for an air rights project shall meet the statutory requisites as a blighted, decedent, or substandard area as well as the following requirements:

(1) The area has a blighting influence on the surrounding area. The applicant shall demonstrate how the existing use of land in a proposed air rights project area has a blighting effect on the surrounding area. Detrimental conditions, such as adverse influences from noise, smoke, fumes, dirt, glare, vibration, or hazards to persons, may be considered in determining the nature and degree of the blighting influence of the proposed air rights project area on the surrounding area.

(2) The proposed air rights project will eliminate the blighting influence.

(3) The proposed air rights project will be compatible with the land uses in the surrounding area and with the general plan for the locality as a whole, any relevant urban renewal plan, and any relevant M.G.L. c. 121A project development plan. The applicant shall show that the airspace uses, including platforms and access facilities on an air rights project site, shall be compatible with surface and airspace uses of the land surrounding the air rights site and that the proposed use of an air rights site shall conform to the general plan for the locality as a whole and shall be consistent with definite local objectives respecting appropriate land uses, density of development, improved traffic, public transportation, public utilities, recreational and community facilities, and other improvements. Use of such air rights site shall also conform to any urban renewal plan for the project area.

- (4) The proposed rights project is economically justifiable.
- (5) The provision of the air rights site is authorized by M.G.L. c. 40, § 221.

25.08: Termination of M.G.L. c. 121A Designation Before Period of Exemption Has Expired

Under the following circumstances, and at the discretion of the Department, M.G.L. c. 121A agreements may be terminated before the approved period of tax exemption has expired:

- (1) Request for Termination. The M.G.L. c. 121A entity has submitted a letter to the Department signed by its officers, requesting termination of c. M.G.L. c. 121A status.
- (2) Disadvantage to Continuation. The M.G.L. c. 121A entity documents substantial disadvantage to continuing M.G.L. c. 121A status, including, but not limited to, a higher urban redevelopment excise tax under M.G.L. c. 121A status than the tax that would be assessed under ordinary taxation, thus creating hardship for the M.G.L. c. 121A project.
- (3) Public Benefit. The M.G.L. c. 121A entity demonstrates that the public benefit will be served by terminating the M.G.L. c. 121A agreements.
- (4) Agreement of Municipality. The city or town with which the M.G.L. c. 121A entity has contracted under M.G.L. c. M.G.L. c. 121A, § 6A agrees with the termination as evidenced by a vote of the city council and signature of the mayor in a city, or a vote of the board of selectmen in a town.
- (5) Fiscal Impact of Termination. The M.G.L. c. 121A entity indicates the fiscal impact of termination upon the project, and the municipality indicates the fiscal impact of the termination on the community including but not limited to tax revenues.
- (6) Valuation of Property. The M.G.L. c. 121A entity and the municipality agree on an assessed valuation of the project property under M.G.L. c. 59 for the first year after termination.

REGULATORY AUTHORITY
760 CMR 25.00: M.G.L. c. 121A.

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